IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7222 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

J I PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Petitioner

MR SK PATEL, AGP for the respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 09/03/2001

ORAL JUDGEMENT

In this petition, which is filed under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ or order to cancel the order dated February 24, 1986

passed by the Collector, Gandhinagar District, Gandhinagar, by which auction sale of Shop No. 4 of Sector-30, Gandhinagar held on November 22, 1985 in favour of the petitioner is set aside. The petitioner has further prayed to set aside order dated April 25, 1988 rendered by respondent no.2 under section 211 of the Bombay Land Revenue Code by which the above referred to order of the Collector is confirmed.

2. A public advertisement was published in Gujarati Daily 'Sandesh' informing the members of the public that open residential plots and shops situated in the City of Gandhinagar were to be offered for sale to the public. In the said advertisement, particulars, like, date of auction, plot number, area of plot, upset price etc. were given. The Mamlatdar (Encroachment) was constituted as Auction Officer and the auction took place on November 22, 1985. The petitioner offered his bid at the auction of Shop No.4 of Sector-30 and as his bid was found to be highest, the same was accepted by the auction officer. The petitioner had deposited a sum of Rs. 34,000/- being 1/4th price of the total sale consideration of the shop and the remaining 3/4th amount of consideration was to be paid after the auction was confirmed by the Collector. After acceptance of bid of the petitioner, the sale proceedings were prepared and others who had offered price lower than that offered by the petitioner had also put their signatures on the said proceedings in presence of the auction officer. The sale was subject to confirmation by the Collector and, therefore, the proceedings were sent to the Collector, Gandhinagar for confirmation. Instead of confirming the same, the Collector, Gandhinagar passed an order dated February 24, 1986 informing the petitioner that the price offered by the petitioner was less as compared to that of price of other shops situated in Sector-30 of Gandhinagar City and as there was a possibility of collusion between the bidders, the auction sale had not been confirmed. By the said order, the Collector also directed to refund Rs. 34,000/- to the petitioner without interest. A copy of said order is produced by the petitioner at Annexure-C to the petition. Feeling aggrieved by the said order, the petitioner invoked revisional jurisdiction of the State Government by filing revision application under section 211 of the Bombay Land Revenue Code and respondent no.2, who heard the revision application, dismissed the same by order dated April 25, 1988 (a copy of which is produced at Annexure-E to the petition) giving rise to present petition.

3. The main grievance of the petitioner is that the

Collector while exercising statutory powers under Proviso to Section 179 of the Bombay Land Revenue Code has set aside the auction sale without affording an opportunity of hearing to the petitioner and as the order of the Collector adversely affects the proprietory rights of the petitioner, the impugned orders should be set aside.

4. The petition was placed for admission hearing before the learned Single Judge of this Court on October 27, 1988 and after hearing the learned counsel for the petitioner, following order was passed:

> "Rule to be heard with Special Civil Application No.4699/85, 1252/86 and group. Ad-interim relief in terms of Para-28(C). Direct Service"

The net result of the above quoted order is that the respondents have been restrained from auctioning Shop No. 4 of Sector-30 of Gandhinagar City and this injunction has continued till date.

5. Though the respondents are duly served, no reply affidavit has been filed by any of them controverting the averments made in the petition.

6. The learned counsel for the petitioner states at the Bar that the controversy raised in the petition is squarely answered by Division Bench judgment of this Court in N.D.Chaudhary v. State of Gujarat and others, 2000(2) G.L.R. 1510 in favour of the petitioner and, therefore, the petition should be accepted. Mr. S.K. Patel, learned counsel for the respondents also after going through the reported judgment, states at the Bar that the controversy raised in the present petition is squarely covered by the Division Bench judgment and, therefore, appropriate orders be passed in the petition.

7. In N.D.Chaudhary's case (supra), while construing section 179 of the Bombay Land Revenue Code, the Division Bench has held as under :

> "A bare reading of the proviso to section 179 of the Code makes it abundantly clear that there is no statutory provision which specifically excludes application of rule of natural justice while exercising powers under the proviso to the said section for setting aside the sale. The basic scheme of the proviso is that the Collector may in appropriate case, after recording his reasons in writing, set aside the sale. One of the important ingredients of the principles of

> natural justice, namely, recording of reasons, is very much incorporated in the proviso to section 179 of the Code. When an important ingredient of the principles of natural justice is statutorily incorporated and when there is no specific exclusion of the principles of natural justice, there is no reason why the maxim of audi alteram partem should not be read into the proviso to section 179 of the Code more particularly when setting aside auction sale adversely affects the proprietary rights of a person in whose favour an auction sale is concluded."

The Division Bench has further held that the contract is governed by a statute, namely, the Bombay Land Revenue Code and what is alleged by the petitioner is that exercise of plenary power by the Collector is arbitrary and contrary to the principles of natural justice and as this is a case of public property by the instrumentalities of the State under the statutory provisions and as the case of the petitioner is that the Collector has acted contrary to the scheme of the Code, a petition under Article 226 of the Constitution is maintainable. It may be stated that while holding that before exercising statutory powers under the proviso to section 179 of the Code, an opportunity of hearing should be afforded to the persons likely to be affected, the Division Bench has relied on the judgment of another Division Bench in H.H. Parmar v. Collector, Rajkot and others, 1979(2) G.L.R. 97. Applying the principle enunciated by the Division Bench in N.D.Chaudhary's case (supra) to the facts of the present case, I find that the impugned orders are liable to be set aside, as admittedly no opportunity of hearing was afforded by the Collector before setting aside the auction sale.

For the foregoing reasons, the petition succeeds. The order dated February 24, 1986 passed by the Collector, Gandhinagar setting aside the auction sale is quashed and set aside. Similarly, the order dated April 25, 1988 rendered by respondent no.2 under section 211 of the Bombay Land Revenue Code by which the order of the Collector is confirmed, is also set aside and quashed. The matter is remanded to Collector, Gandhinagar for deciding it afresh after affording an opportunity of hearing to the petitioner. As the matter is very old, the Collector is directed to decide the same as early as possible and preferably within a period of three months from the date of receipt of the writ. Rule is made absolute accordingly, with no order as to costs.

(patel) (J.M.Panchal,J.)